On the underlying issue the President is wrong as well. Individuals certainly should have the right to organize. They have the right to strike. If they do not want to work, they should not have to work. But, likewise, an employer has to have the right to hire permanent replacement workers to keep the doors open, to keep the plant running, to make the contracts, to meet the schedules, to be on budget or under budget.

Then this President's Executive order says: No, if you hire permanent replacement workers, you are going to lose any Federal contracts, you are going to be debarred, you will not be able to do Federal contracting.

This is an outrageous power grab, and it will not stand the test of time. It should not stand. I hope my friends and colleagues will support Senator KASSEBAUM in her amendment. She happens to be right. I wish it was not necessary.

I might mention, after the President made mention of his Executive order, we wrote the President a letter and said by what authority do you do this? The President does not have the authority to do this. The President does not have the authority to do by Executive order a statutory change, to change the law. Yet that is exactly what he is trying to do. His efforts will not succeed. They should not succeed.

I encourage my colleagues to support the Senator from Kansas in this amendment, and I hope it will prevail.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I wonder if I might ask for unanimous consent to speak for 5 minutes as though in morning business so as not to interrupt this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DUCK HUNTING SEASON IN MINNESOTA

Mr. WELLSTONE. Mr. President, this is an announcement I want to make on the floor of the Senate that is certainly important to my State of Minnesota. Today, the Governmental Affairs Committee, consistent with a request that I made 2 weeks ago, corrected an error in the regulatory moratorium bill, that is S. 219, in order to protect the 1995 migratory bird hunting season. I am delighted that my colleagues, Democrats and Republicans alike, responded to the concerns of thousands and thousands of people who participate in the bird hunting season in Minnesota.

When I learned that a provision in the regulatory moratorium bill threatened the 1995 bird hunting season, I asked my colleagues on the Senate Governmental Affairs Committee to correct the bill. I also introduced a piece of legislation to protect the 1995 hunting season from the moratorium provision. I am delighted to report to the people of Minnesota that the committee took the time to remedy the problem so that Minnesotans can enjoy this cherished annual event. I owe a special debt of gratitude to Senator GLENN and Senator PRYOR for their work on the committee.

Mr. President, in our rush to reform the regulatory process we almost canceled a tradition for this year. Some of my colleagues criticized my efforts to correct the language in the bill. They claimed I was using scare tactics, that this was some kind of political magic show. But now, by correcting this legislation, the committee has made clear that there was an error in the original bill, an error that was overlooked and then vehemently denied for the sake of trying to rush through the Contract With America. Sometimes haste makes waste.

Last week one of my colleagues, a cosponsor of the bill, said that the language in S. 219 exempted the annual bird hunting rulemaking from the moratorium. Perhaps we should note that my colleague was from a Southern State—which from my point of view is fine because I love the South and grew up, part of my early years, in North Carolina. But the normal duck hunting season opens later in the South—I know my colleague from Oklahoma knows this —than it does in Minnesota.

And if the Fish and Wildlife Services' estimated best case scenario proved correct, the original S. 219 would have served to delay the necessary rulemaking, and thus opening the season in Minnesota would have been postponed by no less than 30 days.

Since Minnesotans do the majority of their hunting at the local shoot in early October—our season begins in early October, before the local ducks fly south—such a delay would have effectively canceled a major part of our season. But in my colleague's State, duck hunting season was mid to late November, and therefore might not have been as seriously affected by the delay.

It has always been clear to me that the bill as originally introduced did not protect the 1995 bird hunting season. Despite strong statements that it was never the intent of the bill's sponsors to put the season at risk—and, by the way, I agree that it never was the intent—the language of the bill is what matters most. And now, because of the action of the Governmental Affairs Committee, we have the protection that we need, the rulemaking goes on, and I am very proud of the fact that the men and women in the State of Minnesota and their children can rest assured that we will have no delay or cancellation and that we will have our season.

So this is a sort of thank you to my colleagues and a delivery of a very positive message to Minnesotans.

Mr. NICKLES. Will the Senator yield?

Mr. WELLSTONE. I will be pleased to.

Mr. NICKLES. Just for the Senator's clarification, as original sponsor of S. 219, I would like to inform my colleague that we did have in the original bill an exception for administrative actions. When Senator ROTH introduced the bill for markup, we had an exception for routine administrative actions. Also we have always had exceptions for licensing.

So the arguments that were made by many people—including President Clinton—who said that duck hunting licenses and burials at Arlington cemetery were jeopardized by the moratorium, were totally incorrect. The bill did state—just so my colleague will know— the bill stated and exempted from routine administrative actions—and it exempted agencies in their licensing process—which happens to include hunting and fishing licenses. So they were never in jeopardy. But I know that an amendment was clarified just to make absolutely sure that people in Minnesota would be able to hunt ducks and people would be able to go fishing without any prohibition whatsoever by this moratorium on rulemaking.

Mr. WELLSTONE. Mr. President, I appreciate the comments of my colleague. I want to say to him that I have, of course, heard this before. The key distinction was that the hunting season is not covered by the administrative exemption nor are we talking about licensing. We were talking about the rulemaking the Fish and Wildlife Service undergoes every year to open the migratory bird hunting season. The problem was that the moratorium on rulemaking would affect this hunting rule. That is what I said. The legislators have to be careful with the language. The fact is that the change was made today in Governmental Affairs to make sure that Fish and Wildlife could go forward with that rulemaking and we will have our season. The proof is in the pudding. I am delighted the change took place.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. WELLSTONE. Mr. President, I would like to respond for a moment, and then defer to my colleagues from Massachusetts and Illinois because I had an ample amount of time to speak this mornings. I will not take more than 5 minutes.

I want to make two points. I made them this morning. I would like to be as concise as possible.

The first point is I think the issue is very clear. Senators can vote different ways on this question. The President's Executive order says that when the U.S. Government has a contract with a company, a contractor which in turn permanently replaces its workers during a strike, then our Government will

not be using taxpayer dollars to support future contracts with such a company. It is a simple proposition. Which side is the Government on?

What we are saying is that our Government is on the side of workers, of middle-class people, of working families. It is very simple. One more time it is a shame that our country has not joined many other advanced economies with legislation that would prohibit this permanent replacement of workers. I think we would have passed that bill if not for a filibuster in the last session. That is in fact what happened.

The second point. I think it is extremely important that—as much as I respect the Senator from Kansas, I think she is one of the finest Senators—I believe that her amendment is profoundly mistaken because I think this Executive order is extremely important.

The second point is that I do not think that you can separate this amendment that we are speaking against from the overall Contract With America which has just represented an attack on men and women who are trying to work for decent wages, on children, on the whole question of higher education being affordable for families, on the question of whether or not people are going to be able to afford health care. These issues become very interrelated.

In that sense, this debate and this vote is about more than this amendment. To be able to be work at a job that pays a decent wage so that you can support your family is very closely tied to whether or not you have collective bargaining rights, very closely tied to whether or not you have some assurance that if a company forces you out on strike, if nobody wants to go out on strike, what will then happen is that you will essentially not be permanently replaced and crushed. That is what this is all about, protection for many workers, many employees, and many of their families. That is what this is all about.

For the life of me, Mr. President—I conclude on this because I spoke this morning—I simply do not understand why some of my colleagues make such serious objection to this proposition.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I spoke earlier today in opposition to the amendment by the Senator from Kansas.

I would like to point out a couple of things. I mentioned this morning that permanent striker replacement is against the law in a number of countries, and someone apparently has since questioned whether that is true in Japan because I list Japan as one of the countries where it is illegal.

Let me quote article 7, section 1 of the labor union law of Japan.

> The employer shall not engage in the following practices: (1) discharge or show discriminatory treatment towards a worker by reason of his being a member of a labor union or having tried to join or organize a labor union or having performed an appropriate act of a labor union * * *

Now I would like to quote from the Congressional Research Service.

> The words ''an appropriate act of a labor union'' are construed to include acts arising from collective bargaining with the employer, such as strikes, picketing, and so on. Therefore, under Japanese law it is unlawful for an employer to discharge a striking employee.

In other words, what President Clinton has done is to give through Executive order workers in the United States the same protection that workers in Japan, Italy, the Western European nations have, with the exception of Great Britain. The only Western industrialized nations that do not offer this protection are Great Britain, Hong Kong, Singapore, and the United States of America. This morning someone pointed out to me that I failed to mention Greece as one of the nations that has this particular stipulation.

When my friend from Oklahoma, Senator NICKLES, mentioned that the action is unprecedented and invalid, the courts would find it invalid. Let the courts decide—not the Senate of the United States on an emergency supplemental appropriations for the Department of Defense.

Mr. KENNEDY. Will the Senator yield?

Mr. SIMON. I am pleased to yield to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I notice that the Senator from Oklahoma had been talking about the amendment of the Senator from Kansas and raising questions about what would happen to the Defense Department should they have a contract, for example, on the F–16 or F–18. I take pride that most of the engines for the military are manufactured at a General Electric plant in Lynn, MA. There are some Pratt & Whitney engines by our good neighbors in Connecticut—but for the most part the engine parts are manufactured in my State. The company does absolutely spectacular work on the new advanced fighters and beyond that.

The question was raised by the Senator from Oklahoma, what would happen to these engines should this major contractor go out and have these striker replacements. Well I was watching the sports program last night where we saw those replacement players trying out for the major leagues. And I think it is every young boy's goal to play in the majors.

But I sure would not want our pilots, our servicemen and women, if they had to be called back to the Persian Gulf or elsewhere to have to be flying planes manufactured by replacement workers, or those engines being made by replacement workers, or those weapons systems, which could be the difference between life and death. Does the Senator agree with me that one of the principal reasons for this kind of Executive order is to make sure that we are going to have thorough, professional, competent, highly skilled, highly trained, and highly disciplined workers doing a job for America? I am just wondering whether the Senator reaches a similar conclusion.

Mrs. KASSEBAUM. I wonder if the Senator will yield for a question?

Mr. SIMON. I have the floor, and I would like to respond to his question, and then I will be happy to yield to the Senator for a question. I think the point made by the Senator from Massachusetts is absolutely valid. You can be a good, sincere person, but just not be a good replacement baseball player or person working in an airplane factory. I am going to be leaving the U.S. Senate after 1996. The Chicago White Sox are not interested in me. I cannot understand it, but that is the reality. Michael Jordan was a great basketball player, but he did not do very well on the baseball field.

I think the point made by my colleague from Massachusetts, Senator KENNEDY, is extremely important. We find, even where you do not have permanent replacements, sometimes factories try to keep going and the results have not been quality products. When we are talking about the defense industry, we want quality production. I point out also to Senator KENNEDY that France makes military equipment. They sell planes, and they prohibit permanent striker replacement. Germany makes weapons; they prohibit permanent striker replacement. Italy manufactures military equipment; they prohibit permanent striker replacements. I have not heard from anyone that has said that, in any way, inhibited them from moving ahead. My colleague from Kansas wishes to ask a question.

Mrs. KASSEBAUM. I thought I heard the Senator from Massachusetts suggest that permanent replacement workers would not be able to offer the same type and quality of work. Would you feel any safer with temporary replacement workers, because this Executive order permits temporary replacements? So I think, if the question was what type and quality of work will be done by the permanent replacements, I suggest it could be far more risky with temporary workers.

Mr. SIMON. I say to my friend from Kansas that if she wants to go further and prohibit temporary striker replacement, I will support that endeavor. As a matter of fact, Quebec does that right now. Canada, as a whole, prohibits permanent striker replacements. In Quebec, you cannot even have temporary striker replacement. But whether they are temporary or permanent, there is no question that striker replacement results in a diminution of quality of the end product. The point made by Senator KENNEDY is an absolutely valid point.

Let me make a couple of other points while I have the floor, Mr. President. When the Senator from Oklahoma says Congress has clearly stated its opinion

on striker replacement, that is true, only it is not quite the way it was implied by my friend, Senator NICKLES. The reality is that the House of Representatives passed a bill to prohibit striker replacement, and in the U.S. Senate, 53 Members went on record for this, a majority in the U.S. Senate—53–47. But because of our filibuster rule, we did not pass a law.

When the Senator from Oklahoma says Congress has clearly stated its opinion, he is correct. But contrary to the situation when in 1991, a number of people, including the present Speaker and present majority leader of the House, introduced legislation that would have required employees to be notified in writing that they could not be required to join a union, that did not pass either body. But George Bush issued an Executive order requiring that notices be put up in all workplaces telling employees that they are not required to join a union.

To my knowledge, no one tried to reverse that. We recognize the authority of the President to issue that kind of a statement.

Finally, Mr. President, I see my friend from Texas anxiously waiting a chance to get the floor. Because we have had a discussion of social issues, and the Senator from Washington, Senator GORTON, said that there has been no demonstrable success in our social programs, the reality is, as we have pared down the appropriations for our social programs, more and more of our children are living in poverty. We, today, have 23 percent of the children of the United States living in poverty—far more than any other Western industrialized nation. That is not, as I have said on the floor of this Senate before, an act of God; that is a result of flawed policies. We have to show greater sympathy and concern and we need to have programs to help people.

We are on one of these basic philosophical arguments here: Should Government tilt against working men and women, or should it not? I think Government should not tilt against working men and women. I think that is the fundamental issue here.

Mr. President, I yield the floor. I see the Senator from Texas, and I am sure he will agree with every word I have said here.

Mr. GRAMM. Mr. President, I know it does not have anything to do with the debate we are having, but I want to answer two questions that were posed by our colleagues.

Let me go back to the Executive order issued by President Bush, because the Executive order issued by President Bush was to enforce a Supreme Court decision called the Beck decision. I am not terribly proud of the fact that Executive order was delayed for 2 years before it was finally issued. The Beck decision came about when a man named Beck, who was working in a State that permitted mandatory unionism, said that part of his dues were being used for political purposes and that he did not support the political aim of organized labor. So Mr. Beck, through long court battles that ultimately reached the Supreme Court, argued that his constitutional rights were being violated, because he was being forced to provide money for political purposes that he did not support.

The Supreme Court ruled that Mr. Beck was right and ordered that he and every other worker be told how much of their union dues went for purposes other than to fund collective bargaining. President Bush and the Bush administration, after delaying the implementation of that ruling, finally issued an Executive order to implement it.

So the Beck decision was based on a Supreme Court ruling having to do with the constitutional rights of a worker.

It is hardly worth arguing the point raised by our dear colleague from Massachusetts when he asked if our men in combat want spare parts produced by replacement workers? Well, if the alternative is no spare parts, the answer is clearly, yes.

None of this, however, has anything to do with this issue. People want to cloak this issue in the union-management cloak. And since there are more people who work than people who hire workers, it is a good cloak in which to try to hide that which is a legitimate issue of freedom. But the issue involved here could not be clearer, no matter how you define it, when looking at the rights of a free people.

If I do not want to work for you, I have the right to quit, and no one can deny me that right as a free person. But if I do not want to work for you, I do not have a right to keep you from hiring somebody else.

What is being proposed here is that the Government step in and say, oh, it is all right, if I decide not to work for you, for me to quit; but if I decide to quit through a strike—even though it may put you out of business, even though it may decimate the city in which your company is located—you cannot hire people to take my place. Now, you can hire temporary workers, who have to be fired the minute I want to come back, which means in reality that the company has almost an impossible time finding people to work for it. So what you are doing, in essence, is giving one party to a labor contract the right to put the other party out of business.

We have debated this issue. It has been debated many times in Congress. It was debated in the last Congress when the Democratic Party had a majority in both Houses of Congress. And under the rules that we operate under, as a free society and as the greatest deliberative body in history, it was rejected. Those who supported taking away the rights of an employer to hire another worker when a worker refused to work for that employer were defeated in the U.S. Senate.

Now President Clinton has come in and said that what he could not do through the legislative process, he is going to do through Executive order; that by Executive order, he is going to say to any company that has a contract with the Federal Government of over $100,000, that the Secretary of Labor will be empowered to say to those companies that if you have a strike and the strikers will not come back to work, you cannot hire permanent replacement workers who want to work to keep your company in business. And if you do hire permanent replacement workers, we have the right to take away and break any Government contract you have and bar you from getting any contracts with the Federal Government.

There are a lot of gray areas here, but as I read this, if General Dynamics—of course now Lockheed of Fort Worth—had a sand and gravel operation, in addition building F–16's, and they had a strike in their sand and gravel operation that shut them down as the major employer in a small town in North Carolina, and that small town had lots of unemployment and many people who were willing to come to work in sand and gravel extraction, those people could not come on as permanent employees because General Dynamics would have its contracts in Fort Worth with the Federal Government abrogated.

Mr. President, why, in a free society, should we want to do this? Why, in a free society, should we say to someone who, after all, has put up their capital, saved all their lives to start a business, created jobs—which people voluntarily took and voluntarily decide leave—that they are prohibited from hiring somebody else who wants to do the work? Why should we do that?

Well, there is no argument for doing that other than greedy special interests.

A President who says that he is some new kind of Democrat, whatever that means, a President who says that he was coming to Washington to end the cozy special-interest way of doing business, comes to Washington, and by Executive order, gives one of the largest and most powerful special-interest groups in America the right to intimidate and the right to destroy people's businesses. It is not right.

This ought to be stopped, not because of labor and management rights; it ought to be stopped for the very simple reason that it is fundamentally and profoundly wrong to do this.

What the President is doing is using the contract power of the Federal Government to deny people their rights. What he is doing is denying the rights of the people who have put up their life savings, who have started businesses, and who want to provide jobs when there is a strike. The people who had the jobs do not want to do the work.

Under our existing laws, under our legal system, if other people are willing to come in—and often subject

themselves to all kinds of intimidation, both physical and verbal—and take a job and work because they want the job, they have that right. The Congress voted on this issue and the President was unable to prevail. He certainly could not prevail in this Congress, because Americans, based on the areas where he did prevail, said no to exactly this kind of special-interest deal.

Now the President is trying to do this by Executive order. What we are trying to do is to stop the President. This is within the prerogative of Congress to make the law of the land. And I do not think anybody here who looks at this will see this as anything more than a payoff to special interest.

I do not know what is going to happen on this amendment. I understand there is going to be a motion to table. There may be a point of order. I, for one, am going to vote to overrule the Chair on this issue.

And I want to promise my colleagues this issue is not going to go away. I do not know how many times we are going to debate it, but I am determined that the President is not going to win on this issue, because it is not right. I can assure you that, in good time, when the American people finish the job they started in 1994, if this Executive order is still standing, it will not be standing much longer after 1996.

But this is a very important issue. This is a freedom issue. This does not have anything to do with unions. This does not have anything to do with employers. It has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else who is willing to work.

To get into all of this jargon about collective bargaining confuses the issue and is an attempt to cloak the fact that we are really talking about the rights of a free people.

I am going to do everything I can, as one Member of the Senate, to stop the President from limiting the freedom of employers, people who put up their capital, to hire replacement workers when the people who are currently working refuse to work. And I am going to do it not because of labor versus management, or management versus labor, but because you either believe in freedom or you do not, and I do. I think this is a fundamental issue.

I congratulate our colleague for bringing this issue up. I want to urge her to stand by this issue. I would rather lose on a technicality and continue to fight this issue than to pull this down and allow the President to do this. He may be successful. But I think people ought to know where our party stands and where our Members stand. We are opposed to this kind of special-interest power grab and political payoff, because it is fundamentally wrong and it is fundamentally rotten, and it ought to be stopped.

So I urge my colleagues to support this amendment, whether we vote on a motion to table or whether we vote on the germaneness rule—we have overruled germaneness on many occasions, and it takes simply a majority. I think that we ought to do it in this case. If we cannot do it this time, we will have a lot more bills that this President is going to want to pass. He will face this issue on each and every one of them until finally we prevent this outrage from occurring.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I have listened to the distinguished Senator from Texas with great interest. Let me say to begin with that I am not a strong apostle of Executive orders. I suppose they number into the thousands. There have been Executive orders going back over many, many decades.

Some things that the distinguished senior Senator from Texas said have caught me with a strong sense of fascination. He talked about this Executive order's being a ''political payoff'' by the President. It seems to me that we allow ourselves sometimes to make some very extreme statements. I do not know that that statement by the Senator from Texas can be documented. I do not know that it can be proved. I think it is a rather reckless charge. I would assume that those Members, like myself, who oppose this amendment might likewise be charged with political payoffs, if that theory is carried to its ultimate conclusion.

Let me say to the distinguished Senator that he has no monopoly on standing up for freedom—freedom of conscience, freedom of the individual to work. When God drove Adam and Eve from the garden, he issued an edict that has followed man through the course of the dusty centuries and will accompany man to the end of his days: ''In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return.''

The distinguished Senator from Texas speaks of ''intimidation.'' I can remember the days when the Baldwin-Felts Detective Agency was brought into West Virginia.

The Baldwin-Felts Detective Agency was headquartered in Roanoke, Virginia and Bluefield, West Virginia.

The Roanoke office operated primarily as railroad detectives.

The Bluefield office, headed by Tom Felts, operated primarily as mine guards. They were originally employed by the coal companies to police the unincorporated coal company towns. As the union movement began to grow, they began to serve more and more as union busters. The miners would call them ''thugs.''

It became their primary job to keep union organizers out of the company towns. If the miners went on strike, they evicted the miners from the company houses, and used whatever means necessary to break the strike, from bullying the miners, to beating, and even murdering.

The Baldwin-Felts operated throughout southern West Virginia with the exception of Logan County. In that county, Sheriff Don Chafin maintained a 200-man deputy sheriff force, allegedly in the pay of the coal companies in Logan County, and it was their job to keep the union organizers out of the county.

I mentioned that Tom Felts headed the Bluefield office. His brothers, Lee and Albert, both Baldwin-Felts mine guards, were two of the eight guards who were killed in the Matewan Massacre.

The coal miners of West Virginia have seen intimidation. I grew up in a coal miner's home. I can remember when there was no union. The man who raised me, who was kind enough to take me as an orphan—I was 1 year old—and brought me up in his home, was a coal miner. I can remember the days when he worked from daylight until after dark to ''clean up his place.''

That meant that a coal miner, if he did not clean up his working place, if he did not remove all the slate, the coal, and the rock, that had been shot down with dynamite, if he did not clean it up before he left that night, was told that there was always someone else who would be glad to take his place. There was no union to protect his job.

The coal miners took what they were given. They had no weapon with which to fight back. Many times as a boy I recall going down to the company store at Stotesbury, in Raleigh County where I lived, and reading on the bulletin board a notice that, come the beginning of the next month, the miners would suffer a cut in their wages. The price per ton of slate, the price per ton of coal, would be reduced from 50 cents to 45 cents, or to 30 cents or to 25 cents.

In those days coal miners wore their carbide lamps on cloth caps. They had no way of demanding that safety be enforced in the workplace. They bought their own dynamite, they bought their augur, their pick, their ax, their shovel. I have been in the mines, and I have seen where my dad worked. I could hear the timbers cracking to the right, the timbers cracking to the left.

I saw the water holes through which those men had to make their way on their knees. The roof was not high enough for them to walk upright. They had to walk on their knees. They had to shovel that coal, shovel the rock and heap those cars with the loads of slack or lump coal or slate or rock or whatever it was, while on their knees.

They had no way of demanding that their pay be increased. They just had to take whatever the company decided at a given time to pay them. There was no union. I was there when the coal miners union came to West Virginia, the coal miners union. I can remember the coal miners having to meet, in

barns, in empty buildings, clandestinely, in order to organize a union.

Many times I have seen my dad overdrafted on payday. He had worked the full 2 weeks, and on payday was in debt to the coal company. Then when the union came, I saw the faces of those coal miners. The faces would light up. At last, the coal miners had a weapon with which they could bargain collectively concerning their wages and their working conditions. They could strike, if need be, to force the company to improve health and safety conditions, and to enforce safety in the workplace.

Many times I walked into the miners' bathhouse at Stotesbury—not many times, but several times I walked into the bathhouse at Stotesbury—as a boy and as a young man and I saw stretched out on the bathhouse floor a dead coal miner who had been electrocuted or run over by a mine motor. One of my friends, Walter Lovell, had both legs—both legs—cut off one night by a runaway motor. In this day and time, his life might have been saved. But he died of loss of blood and gangrene. My own dad mashed his fingernail. He lost his finger. If it had been 2 or 3 days later before going to the hospital, he would have lost a hand. Another week, he may have lost his life.

I can remember seeing a man in the coal mining company's doctor's office at Stotesbury, waiting in great pain because he had mashed his finger and gangrene had set in. Within a few days, he was dead.

The distinguished Senator from Texas used the phrase ''they don't want to work,'' ''don't want to work.'' Perhaps they do not want to work because they want certain safety conditions improved. It is not laziness always. Now, I have not always agreed with the unions, and on some occasions, I have not sympathized with strikes. There have been some strikes that I thought were not called for. But because miners or other workers seek to improve their safety conditions, their working conditions, their wages is not a matter of their not wanting to work.

When I ran for the U.S. Senate, I was initially opposed by John L. Lewis, the coal miner's chieftain. He eventually came around to support me, but the thing that made my decision to run for the U.S. Senate, may I say to the Senator from Texas, the thing that made the decision for me to run for the U.S. Senate was the very fact that Mr. John L. Lewis, the president of the United Mine Workers, sent word to me in West Virginia not to run for the Senate, but instead to run again for the House of Representatives.

I had been elected to the House three times, and I decided I would like to get around the State during a break between the sessions and determine what kind of support I would have for a Senate race. While I was in Wheeling, West Virginia, one night, I got word from a man by the name of Bob Howe, representing the United Mine Workers of America—John L. Lewis' liaison man working on the House side.

While I was in West Virginia, Mr. Howe called me on the telephone and said, ''I'd like to talk with you. When will you be back in Washington?''

I said, ''I don't know when I'll be back. What do you want to talk about?''

He said, ''Well, 'the boss'''—the boss—''wants me to get a message to you.''

I said, ''Well, the closest I will be to Washington for several weeks will be when I go to Romney next Thursday night to speak to a Lion's Club,'' or whatever it was, a civic organization.

He said, ''Fine, I will come over there and meet you.''

So he drove over to Romney, West Virginia. We met. The message was from Mr. John L. Lewis, who sent word that he did not want me to run for the Senate; Mr. Lewis wanted me to run for reelection to the House.

He said, ''You have a good labor record. We will be glad to support you for the House, but if you run for the Senate, Mr. Lewis will come into West Virginia and campaign against you. He will campaign for William Marland,'' who was a former Governor of West Virginia. So I said to Mr. Howe, ''I'll be in touch with you.''

That very night, I drove south into Beckley, WV. Those were the days when we had nothing better than a two-lane road in West Virginia. We did not have four-lane roads in West Virginia. I can remember the days when we did not have two-lane roads in West Virginia and when we even had to blow the horn on the car when we went around a curve.

In any event, I drove to southern West Virginia that night, and on the way, I stopped at a telephone booth in Petersburg, Grant County, which, by the way, is a strong Republican county, about 4-to-1 Republican, and goes for ROBERT C. BYRD.

Snow was up around my ankles when I went into that telephone booth. I called my wife and I said, ''Erma, I've reached my decision.''

She asked, ''Concerning what?''

I said, ''Running for the Senate.'' I said, ''I've made up my mind.''

''What made your mind up?''

I said, ''John L. Lewis. When he threatened to come into West Virginia and campaign against me, that made my decision.''

She was back here in Arlington in our little five-room house at that time, taking care of our young daughters and the dog. We had a dog named Billy. That was Billy Byrd I. We now have Billy Byrd II.

I drove south and got into Beckley in the early morning, called a few people in southern West Virginia, called in the press, and I said, ''I'm going to be a candidate for the Senate. William C. Marland is going to be my opponent, and John L. Lewis is going to come into the State and support Mr. Marland.''

Not long thereafter, Senator Matthew M. Neely, a Senator from the State of West Virginia, died. Instead of Mr. Marland's running against me, he filed for the unexpired seat of Mr. Neely. It was then that Mr. Lewis asked me to come downtown and see him at his office. The coal miners in West Virginia had been upset at the prospect that Mr. Lewis had planned to support Mr. Marland against ROBERT BYRD.

So I went downtown to meet with Mr. Lewis at his office. Mr. Lewis looked at me with those twinkling blue eyes that seemed to pierce right through me, and said, ''Young man, I resented your announcing that I would come into West Virginia and support Bill Marland against you. I'm in the habit of making my own press announcements.''

And I said, ''Well, Mr. Lewis, you are a great labor leader. My dad was a coal miner. I can remember when there weren't any unions and today there are 125,000 coal miners in West Virginia, and they are in your union. You have been a good labor leader. And the union has been good for the coal miners. But when you sent Mr. Howe into West Virginia to tell me to run for the House again, not run for the Senate, and that you would come into West Virginia and campaign for Marland against me, I resented that. And that made up my mind. That made my decision to run for the Senate. Mr. Lewis became a strong supporter, and we were friends until his death.

I say this just to say to my friend from Texas that some of us who oppose this amendment today do not feel that we are paying off any debt to any special-interest group.

I was opposed by Mr. George Titler, the president of the United Mine Workers, district 29, when I ran for the West Virginia State Senate in 1950. Why? He called me into his office after I was elected to the House of Delegates in 1946, before the first meeting of the House of Delegates in the session of 1947, and told me he wanted me to vote for a certain individual for Speaker of the House of Delegates. I said, I can't do it. I'm going to vote for his opponent.

I told him why. I said, ''In the first place, I have assured this man I would vote for him. In the second place, I have been told by those who serve in the legislature that he is the better man. I am going to vote for him as I promised.'' Whereupon Mr. Titler said, ''When you run for reelection, we will remember you.'' Consequently, in 1948, when Harry Truman ran for reelection, the leadership of the United Mine Workers in that district was opposed to my reelection.

Here I was, a little old Member of the House of Delegates, running for reelection to the House of Delegates in a big election. There were many other offices at stake. Yet, the headquarters of the UMWA District office concentrated on that poor little old coal miner's son's run for reelection to the House of

Delegates. I won the election. Do you know how I did it? I went right down into the local union meetings with my campaign.

George Titler even visited the Stotesbury local union—of which my dad was a member—and urged those miners to vote against me. I sat in on the meeting, and when Mr. Titler completed his speech, I spoke to the coal miners; I spoke their language. And they gave me their overwhelming support.

The distinguished Senator from Texas speaks of those who invest capital. We have to have investors of capital. They have helped to make this country a great country. But what is the working man's capital? The working man's capital, my old coal miner dad's capital, his only capital was his hands and the sweat of his face. God had laid that penalty upon man: ''In the sweat of Thy face shalt thou eat bread.''

There is nothing more noble than honest toil. And so it is, that I stand today against this amendment. Intimidation works two ways. No longer is the coal miner intimidated. No longer is he driven as with a lash. ''Clean up your place; if you don't, there is somebody else waiting for your job.'' No longer does the coal miner have to buy at the company store.

Something can be said, of course, pro and con, about almost everything. I have never been ruled by any union. They know that. I have never worn any man's collar but my own—none. The Governor of West Virginia once asked me to get off the Democratic ticket. I said no.

I could tell the Senator from Texas many stories, I think, which would perhaps delight him because I stood up against the top leadership in the union, but the rank and file coal miner stood with ROBERT C. BYRD. They knew I was their friend. I was their friend then. I will always be their friend.

The Senator may very well remember an occasion when I offered an amendment here to help the coal miners and fought hard for it. I went to the offices of Republicans and Democrats in the interest of my coal miners amendment. The then majority leader, Mr. Mitchell, was against me. The then minority leader, Mr. DOLE, was against me. The President, Mr. Bush, was against me. I had the battle won until right there in the well of the Senate, the joint leadership peeled off three votes that had looked me in the eye and said they would vote for my amendment.

Well, that was pretty tough to lose, but I got up off the carpet, dusted myself off and, magnanimous in defeat, said, ''I lost. Let's go on to the next one.''

I say to my friend from Texas that I have faced intimidation personally, and I have seen the coal miners and other workers of this country face intimidation when the only weapon that they had was the union—the only weapon they had with which to protect their rights. And so I stand against the amendment.

I do not speak evil of those who support the amendment. We have different viewpoints around here. But these are not ''greedy special interests,'' not the people I represent. They are not greedy special interests, the workers in West Virginia.

The Senator may wish to comment while I have the floor. I will be glad to hear what he has to say.

Mr. GRAMM. If the Senator will yield, I am always educated when I listen to the great former chairman of the Appropriations Committee, and I think he has given us a great lecture this afternoon.

I appreciate him yielding because I have to go back for an appointment, but I wanted to make a point. Everything that the Senator has said today I agree with. There was a time in this country where power was vested too greatly in the hands of business, and it created a distortion in the marketplace. That needed to change, and we changed it. Now, some people did escape it. I am looking at one of those people, a great testament to the fact that America works. ROBERT C. BYRD is a great testament to the fact that America is a great country and a land of opportunity.

My point, Mr. President, is that you can go beyond the point of having a fair balance. It is one thing to guarantee the rights of people to strike, to be a member of a union and give them the ability to go to the employer and say these are things we demand or we will withhold our labor. But once you reach the point where you can say to the employer, not only will we withhold our labor but we will have Congress, or in this case the President using Executive power, prevent you from hiring anybody else, that puts us in a similar position today that we were in during the era of which the Senator speaks—only this time it is those who provide the jobs having their rights denied.

I am concerned that we are going too far in strengthening the rights of labor as compared to the rights of people who invest their money.

I am concerned that we are going to have a rash of strikes, and we are going to initiate labor unrest. Since the short period after World War II, where we had labor unrest for good reason—we had held wages back; prices had risen in the war—we have had relative stability.

I am concerned that if we take away the rights of the employer to hire a replacement worker or replacement workers when the union will not come back to work, that we will go to the opposite extreme from that the Senator spoke of. And I simply say that you can go too far in the direction of management, as the law did in the 1930's, but I think you can go too far in the direction of labor, as I believe this Executive order does.

So, with profound respect for everything that the Senator is saying, I think the President's Executive order was wrong.

Obviously this is a free society. This is the greatest deliberative body in the world. And one of the reasons it is, is because the distinguished Senator from West Virginia is a Member. But this is an issue where I think the President is wrong and I believe that this is a case of promoting the interests of one special interest—and it is a special interest. Just as business is a special interest, so is labor. I think the President is going too far. I think it hurts the country. That is why I am in support of the amendment.

It is not to say that I would ever go back; and I hope, had I served when the Senator served, that on many of those issues we might have been on the same side. But today I do not think anybody can argue that labor lacks rights. It is a question of what are the legitimate rights of the people who invest their own money, who create jobs.

It is the balance of the two that I seek, and I believe this goes beyond that delicate balance.

I appreciate the Senator yielding. I am not opposing the question, and it is very generous of him, as he always is.

Mr. BYRD. Mr. President, I respect the Senator's viewpoint. I respect every Senator's viewpoint, here.

I, too, seek a balancing of the interests. And I think that is what we are doing in opposing this amendment. As I understand the amendment, it speaks of lawful—lawful strikes. I think the strikes we are talking about are those that are lawful strikes. I think we are just going in the opposite direction if we support this amendment.

This amendment prevents any funds appropriated in fiscal year 1995 from being used to ''implement, administer, or enforce any Executive order, or other rule, regulation, or order, that limits, restricts, or otherwise affects the ability of any existing or potential Federal contractor, subcontractor, or vendor to hire permanent replacements for lawfully striking workers.'' Obviously, if it is unlawful that puts a different color on it, a different face on it. Mr. President, the ultimate tool and the legal right of an American worker under collective bargaining, the right to strike, should not become the right to be fired. It should not become the right to be fired.

President Clinton signed an Executive order that allows the Secretary of Labor to terminate for convenience any Federal contract with a firm that permanently replaces lawfully striking workers. So I emphasize again the word ''lawfully.'' President Clinton's order also allows the Secretary of Labor to debar contractors that have permanently replaced lawfully striking workers, thereby making the contractor ineligible to receive Government contracts until the labor dispute that sparked the strike is resolved. This order will affect some 28,000 companies that receive 90 percent of Federal contract dollars. In signing this order, the

President has thrown his support, and the protection of the Federal Government, behind the principle that American workers can employ every facet of collective bargaining, including the right to strike, in their efforts to resolve labor disputes. The amendment we are considering today in my judgment would destroy that protection.

In recent years, the right to lawfully strike has more and more become the reason to be fired, or to be displaced by permanent replacement workers. Being replaced by temporary replacement workers is one thing. But being replaced by permanent replacement workers is quite another. The ability of companies to easily hire permanent replacement workers for employees lawfully engaged in a strike over proposed changes in the terms of their employment undermines the incentive of companies to negotiate the speedy resolution of labor-management conflicts. I note that, in recent years, changes in the terms of employment are just as likely to be decreases in compensation levels or health benefits to workers, rather than increases. American workers are being asked to do more and more for less and less, or with fewer and fewer workers, than ever before. In a hearing conducted by the Senate Committee on Labor and Human Resources in the last Congress, Mr. Jerry Jasinowski, president of the National Association of Manufacturers, testified that as a result of increased global competition, additional costs must often be passed back to workers in the form of ''lower compensation or lower employment.'' Strikes may often be the last resort for employee groups that have been squeezed hard by this process.

Proponents of this amendment have suggested in the past that legislation that would protect the return to work of American workers engaged in a lawful strike would drive jobs out of America and dampen economic growth. This is a scare tactic, plain and simple. American jobs have already been moving out of the United States. They are leaving our shores for a variety of reasons—lower production costs due to cheaper labor, greater international use of child labor, lax environmental and worker safety standards, Government subsidies, and easy or even preferential access to the U.S. market from abroad. In some overseas locations, workers have no collective bargaining rights—none. Just like the situations that were prevalent back in the coal fields when I was a boy, when miners could be intimidated or cowed into accepting wages and working conditions which would be unthinkable today. And those conditions are prevalent overseas in may countries. These would be unthinkable today in these United States. Just as those conditions back in the hollows and hills of West Virginia today would be unthinkable. They were unthinkable then, but who was there to champion the rights of the hard-working people who had to go down into the bowels of the Earth and labor with their hands and in the sweat of their face earn a crust of bread for their children?

All of these factors reduce costs for companies moving off of U.S. shores, and increase their profits. But what is good for profits is not always good for the human beings who do the work. Millions of men and women in this country have only the capital of their bare hands, a strong back, a strong neck. They will not go back to the days when that strong back felt the lash of intimidation and the threat: ''Clean up your place before you leave. There is someone else waiting for your job.''

I do not believe that the United States should lower its safety and environmental standards, or promulgate Third-World working conditions, in order to compete on this kind of a playing field. Historically, unions and collective bargaining have served to contain the abuses of owners and management. Unions and collective bargaining have also worked historically to improve conditions for large numbers of working people previously employed in the sweatshops, in the shipyards.

Try riveting. Try welding. Try the job of being a shipfitter in the shipyards in Baltimore when the cold winds whip across the bay and freeze the vapor of your breath when it hits your eyelashes. I can hear those rivets in my dreams. I know what it is to be a worker, to have to work with my hands. There is nothing dishonorable about it. The Bible says, ''The laborer is worthy of his hire.''

Throughout the years, unions have helped to ensure fair and equitable treatment for employees, and these standards have carried through to nonunion workers as well. They have benefited likewise. Now, unions must strive to protect the jobs, the health benefits, the retirement packages, and compensation levels of employees from excessive devaluation in the name of competitiveness, downsizing, or restructuring.

While I agree that the United States must work to compete more effectively in global markets, and that restructuring the economic relations among the United States and her trading partners may be essential to improving and expanding trade, I do not believe that we should enter into any agreement, or support any action, that does not benefit both the American industries and American workers.

I voted against the North American Free-Trade Agreement. I voted against the Uruguay Round of the General Agreement on Tariffs and Trade in part because these agreements will likely lead, in this Senator's judgment, to the displacement of many American workers—workers unlikely to have the skills required to easily secure other employment. Such displaced workers only add to burdens we already face in terms of meeting the challenges of an increasingly competitive international economy, and also mean a continued decline in the basic standard of living for millions of Americans and their children.

Undermining whatever support exists for striking workers to return to their jobs upon the successful conclusion of negotiations further encourages companies to hire permanent replacement workers at the lowest wage that the market will bear. Strikes, it is important to note, are the absolute last resort of working men and women in some situations. A strike is not a desirable consequence for labor or management. Striking workers are faced with a considerable loss of income for an undetermined period of time.

I know. I once was a small businessman; a small, small businessman; very small; very small. I had a little grocery store in Sophia, WV. There was a big coal mining strike in West Virginia in the beginning of the 1950's. The strike lasted several months. Some of the coal miners could not get food for their children. They could not get credit at the company store. So they came to ROBERT BYRD's little jot'em down store.

They came to the little jot'em down store, the Robert C. Byrd grocery store in Sophia. I let them have food on credit. They were on strike. It was a long strike. But I let them have whatever I had in the shelves. I did not have a lot. But it saw some of them through—the coal miners in Raleigh County.

In 1952, I ran for the U.S. House of Representatives. I attended a Democratic rally one night. And the president of the United Mine Workers District, headquartered in Charleston, the State capital, was speaking at the rally.

There were three candidates for Governor. And, of course, that meant three factions. And I did not want to align myself with any faction. I wanted to be liked by everybody. I wanted everybody to be for me. I wanted the votes of all.

UMWA District President Bill Blizzard, one of those fire-eating, union leaders in the old days, was speaking when I arrived at the rally a bit late. He pointed his finger at me and said, ''Whether they are a candidate for constable or for Congress''—he pointed his finger right at me. I was a candidate for Congress—''if they do not vote for our candidate for Governor, don't you coal miners vote for them.''

I was not welcome at the rally. The master of ceremonies happened to be a young attorney who, after Mr. Blizzard had finished speaking, said, ''Now we will have the benediction, and after the benediction go over into the other room of the schoolhouse and get yourself some ice cream and cakes and refreshments.''

About that time, an old, grizzled coal miner stood up in the back of the room, and said, ''We want to hear BYRD.'' And this enterprising young lawyer said, ''You can hear BYRD some other time. We are going to have the

benediction.'' Well, nobody is going to argue with that. Let the preacher give the benediction.

But then I said to a couple of my friends who were there with me that night, ''Go out to the car and get my fiddle.'' I started playing a few tunes and the whole crowd came back in with their ice cream and cake and sat down. They filled the room.

I said, ''When you were on strike, you coal miners, when you coal miners were on strike, who fed your children? Did Bill Blizzard, the United Mine Worker President, feed your children? How many groceries did he provide when you were in need? I fed your children. Are you going to vote against the man who helped the coal miners when they were on strike?'' They answered with a loud ''No!'' The miners gave me a big vote in that election, and Bill Blizzard became my supporter and friend.

So I have been a worker in the field myself. I know what it is to have my brother-in-law's father killed in a slate fall in the coal mines. I know what it is to have the brother-in-law die from pneumoconiosis—black lung.

Workers do sometimes strike for better working conditions, for safer working conditions.

They do not strike ''because they don't want to work.''

A strike often pits brother against brother, neighbor against neighbor, and can tear entire communities apart. However, gutting this action of last resort by allowing companies to hire permanent replacement workers, as this amendment does, removes the incentive for companies to seriously negotiate with their work force.

Research has shown that strikes involving permanent replacement workers last an average of seven times longer than strikes that do not involve permanent replacement workers. Strikes involving permanent replacements also tend to be more contentious, and can disrupt whole communities for long periods. In my own State of West Virginia, a labor dispute at Ravenswood Aluminum Corporation was unresolved from November 1990, until June 1992. This dispute resulted in the hiring of 1,000 new workers as permanent employees by the company. The striking workers were told that if and when the dispute was resolved, they would not get their jobs back. Eventually, contract negotiations resumed and an agreement was finally reached that returned union workers to their jobs. If it had not been possible to promise these replacement workers permanent jobs, efforts to find the replacements might have been hindered, giving the company greater incentive to negotiate with the union and likely resolving this labor conflict much sooner.

Proponents have argued that the status quo should remain the status quo—that no effort should be made to shore up the eroding ability of workers to strike for fair and equitable compensation, health benefits, and retirement packages. This argument simply does not recognize the changing economic and employment conditions brought about by changes in the world economy and by the adoption of recent trade agreements that have eroded the income power and options of American workers.

We must not take actions that would denigrate the inherent dignity of work or the noble role of the American worker in the life of this Nation. All of us enjoy the fruits of their labor. The sweat of their collective brows, the caloused hands, the bent backs, the wrinkled faces, and their broken health deserve our gratitude and our utmost respect. Where would any of us be without their toil?

Out on the roads they have gathered, a hundred-thousand men,
To ask for a hold on life as sure as the wolf's hold in his den.
Their need lies close to the quick of life as rain to the furrow sown:
It is as meat to the slender rib, as marrow to the bone.
They ask but the leave to labor, for a taste of life's delight,
For a little salt to savor their bread, for houses water-tight.
They ask but the right to labor, and to live by the strength of their hands—
They who have bodies like knotted oaks, and patience like sea-sands.
And the right of a man to labor and his right to labor in joy—
Not all your laws can strangle that right, nor the gates of Hell destroy.
For it came with the making of man and was kneaded into his bones,
And it will stand at the last of things on the dust of crumbled thrones.

Mr. President, I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I might yield 5 minutes to the Senator from Idaho and then have the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I thank my colleague from New York for yielding. I will not use the 5 minutes, but I did want to make a few comments in relation to the Kassebaum amendment and what I believe to be its importance in this issue that we are debating here on the floor.

Mr. President, I will also add to my statement a letter from NFIB [National Federation of Independent Business], for in that letter are several quotes that I think are extremely valuable to this debate. One of those quotes which is important, and I will mention it at this moment, as it relates to what our President has just done and the meaning of that act as it relates to a balance that we have held in labor law now for a good long while. It says:

This balance of labor's right to strike with management's right to stay in business using temporary or permanent replacement workers during economic strikes has not been challenged by any President since 1935.

Are the working conditions and are the labor conditions of America today so different, have they changed so dramatically since we placed quality labor laws on the books of our country since 1935 that our President would act as he has acted? I simply do not believe that is true.

What our President has said by this act is, ''Give in or go out of business.'' No President has said it that way, nor should they. It is unilateral disarmament of employers at the bargaining table. And that has never been public policy and it should never be public policy.

What was then was then; what is now is now. The world has changed significantly. And it is important that the laws that still work be allowed to work.

Certainly, the action that was taken by this President is to disallow fundamental labor law in this country and the unique balance that has been created and held for so many years.

The amendment to prohibit funds from being used to implement any Executive order that bars hiring Federal contractors who hire permanent worker replacements is an amendment that should be passed by this Congress, and I support it strongly.

If there had been a pressing need for such an order, why did this President not issue it more than 2 years ago? What has changed over the course of this President's administration that would cause for this destabilizing act to occur when no President has taken this stand for 35 years? Nothing has happened. That is the answer. So why would he do it?

If the President actually had a clear legal authority to issue such an Executive order, why did he not do it earlier?

Well, he does not have, in our opinion, that legal authority.

Why, instead, did he put all of his eggs in one basket of striker replacement legislation during the last Congress?

One has to wonder if the answer does not lie more in politics than in policy.

I concur with the Senator from Washington [Mr. GORTON] that the President has exceeded his constitutional and legal authority.

The Executive order flies in the face of 57 years of settled employment law as written by Congress, as consistently applied by the courts, and as consistently enforced by 10 Presidents and their administrations.

No President has ever launched such a full frontal attack on settled Federal laws governing employer-employee relations; on fair and flexible bargaining in the work place; on the rights of employers and employees to determine their own negotiating behavior on a level playing field; and on the Federal Government's role as impartial referee, rather than coach and cheerleader for one side.

This Executive order will be costly to taxpayers, as strikes are encouraged and prolonged against contractors

working on Federal jobs; and to the general public and the economy, as the ripple effect of these strikes cause bottlenecks elsewhere in the economy, affecting suppliers, subcontractors, carriers, and others.

Like so many other clever schemes that erupt within the Capital Beltway, this one will not help workers, it will hurt them; will not create jobs, it will destroy them; was designed to court a few elite lobbyists, not rank and file workers and their families; will shut the door to Federal contracting on many small businesses who will find this condition economically impossible to meet.

I ask unanimous consent that the letter from the NFIB be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
Washington, DC, March 9, 1995.

Senator NANCY LANDON KASSEBAUM,
U.S. Senate,
Washington, DC.

DEAR SENATOR KASSEBAUM: On behalf of the more than 600,000 members of National Federation of Independent Business (NFIB) I urge your colleagues to support your amendment to H.R. 889, the Defense Supplemental Appropriations bill. The amendment would effectively void the President's Executive Order barring federal contractors from the use of permanent replacement workers.

Such an Executive Order could increase the taxpayers' cost of federal contracts and would destroy the equality of economic bargaining power between labor and management which has been preserved for 55 years. This balance of labor's right to strike with management's right to stay in business using temporary or permanent replacement workers during economic strikes has not been challenged by any President since 1935.

In a recent poll, 81% of NFIB members oppose striker replacement legislation. Small business owners view any change in the delicate balance between labor and business as a threat to the livelihood of their business. They believe upsetting this balance will result in the following:

Increased work disruptions affecting both union and non-union businesses;

A confrontational workplace setting, which will lead to more strikes, diminished competitiveness, and lost productivity;

Increased strike activity in large companies, which adversely affects small businesses that are located near or contract with the struck company;

The creation of an unfair union organizing tool; and

An unbalancing of over 55 years of labor law.

Small business owners urge your colleagues to support your amendment to H.R. 889. Your vote on passage of the Kassebaum amendment will be considered a Key Small Business Vote for the 104th Congress.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

Mr. HATFIELD. Mr. President, the announcement of an Executive order banning the use of replacement workers by Federal contractors disturbs me because it appears to circumvent congressional authority to amend this Nation's labor laws. Because of this concern, I support the effort to prevent the implementation and enforcement of this order. Nevertheless, I remain a supporter of legislative attempts that would amend the National Labor Relations Act and overturn Supreme Court decisions which have weakened what I believe to be the original intent of the law—to explicitly protect a worker's economic self-help activities through the right to strike.

Mr. BIDEN. Mr. President, all of us here, on both sides of this issue, agree that the right to strike is essential to preserving the balance of power between labor and management in this country. But that right is hollow if, by exercising it, a worker faces the loss of his or her job.

President Clinton has taken the important step of clarifying that in this country, as in the rest of the industrial democracies with less than a handful of exceptions, workers cannot be fired for exercising their legal rights.

Unfortunately, our attempts to clarify that right through legislation, led for years by Senator Metzenbaum, were blocked by filibusters, despite clear majorities that favored a ban on striker replacements.

President Clinton's Executive order is needed because Congress has been frustrated in its attempts to clear up the current untenable situation.

His action follows established precedent, such as actions by President Bush, who, in 1992, issued an Executive order to require unionized contractors to post notices in their workplaces informing all employees that they could not be required to join a union.

President Bush also used executive authority to ban unions from using for political purposes fees collected that had been collected from union members who disagreed with union policy positions.

As a Republican Congressman said at the time, this was an ''effort by the President to do something through Executive order that he cannot get Congress to do.''

So let's not be distracted by procedural arguments. President Clinton was well within his authority and established precedent when he issued his Executive order. Let's stick to the substance of this issue, an issue that goes to the fundamental rights of workers, and to the very foundations of labor-management relations in this country.

Mr. President, before the New Deal, striking workers had no legal protection against being fired. To provide legal protection for the right to strike, Congress passed and President Roosevelt signed the National Labor Relations Act in 1935. Without it, hostile, confrontational, and often violent labor-management relations would have persisted.

But in 1938, a Supreme Court ruling that confirmed the right to strike offered an unsolicited comment that established a legal basis for hiring permanent replacements for striking workers.

This language has remained a logical and legal anomaly ever since. In law schools across the country, law professors have struggled in vain to distinguish between firing and permanently replacing striking workers.

For many years, this problem was, in fact, academic; it had little application in the real world.

But for the last decade and more, the issue has become all too real for thousands of workers who have lost their jobs by exercising what the vast majority of Americans believe should be their right under the law.

The permanent replacement of striking workers has become an all too common tactic in labor-management disputes. In a survey last year, 25 percent of employers said that they would hire or consider hiring permanent replacements, in response to a strike. A recent GAO report found that employers hire or threaten to hire permanent replacements in one of every three strikes.

Today, the threat of permanent replacement calls into question the fundamental right to strike, upsets the balance of power between workers and management, and introduces an unnecessary source of friction and hostility into labor relations.

We have evidence that strikes in which permanent replacement workers are hired are longer, and more heated, than those in which that tactic is not used.

Mr. President, I know that there is much emotion on both sides of this issue, and I would like my colleagues who disagree with me to understand that I do not take their concerns lightly. Let me address a few of those concerns now.

We have heard in recent debate that President Clinton's Executive order will upset the balance of power between labor and management and make strikes more likely as a result. This argument is not only inaccurate, Mr. President, it shows a fundamental misunderstanding of the costs of a strike to workers and their families.

First, it is the increasing use of striker replacements that has upset the traditional balance of power between workers and employers. The President has acted to remove this source of much of the hostility and divisiveness that now attends labor-management relations.

Second, Mr. President, under no circumstance is a strike an easy option for workers who will suffer the loss of wages, health benefits, savings, and even major assets such as cars and homes to undertake a strike with no knowledge of what the outcome will be.

We have also heard, Mr. President, that without the threat of hiring permanent replacements, employers will be powerless in the face of union demands. The fact of the matter is that employers did quite well for over four decades, by stockpiling inventories,

hiring temporary replacements, transferring work, and by other tactics, without recourse to permanent replacement workers.

As we seek new ways to encourage labor-management cooperation, to recognize the shared goals of American workers and employers in a changing global economy, a first step ought to be to eliminate the unnecessary, inflammatory practice of permanently replacing strikers.

Mr. President, simple fairness demands it. And simple fairness demands that we defeat this attempt to cut out the funding for President Clinton's Executive order. I urge my colleagues to vote with me to put this relic of another era of labor-management relations behind us.

Mr. PELL. Mr. President, I strongly oppose this amendment by the Senator from Kansas. Her amendment, if adopted, would prevent the expenditure of funds by the Labor Department to carry out the Executive order President Clinton signed yesterday.

The Executive order is entitled ''Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts.'' Simply put, this order would prevent Federal agencies from contracting with companies that permanently replace striking workers.

Current law protects workers who strike for unfair labor practices, but allows those who strike for economic reasons to be permanently replaced—a curious synonym for being fired.

Congress has attempted to legislatively rectify this inequity. Time after time, however, a minority of our colleagues has frustrated the will of the majority, often even preventing the Senate from debating the matter. In the last 3 years, the Senate has been forced to vote to invoke cloture on the bill four different times. Each time, despite garnering a majority necessary to pass the bill, a minority has ruled the day and frustrated the will of that majority: June 11, 1992, cloture failed 41 to 55; June 16, 1992, cloture failed 42 to 57; July 12, 1994, cloture failed 47 to 53; and July 13, 1994, cloture failed 46 to 53. Now, Mr. President, the opponents complain that the President is thwarting the will of Congress.

Whenever striker replacement legislation has come before us in the past, I have heard from Rhode Islanders with views on both sides of the issue. Many business people have told me of their fear of a tilt in the balance of power in labor-management relations. They have discussed their concern with being faced with one of two choices: agree to union economic demands or be forced out of business. One gentleman even remarked that he considered employee demands for increased wages to be blackmail.

I view striker replacement legislation and this Executive order differently. The legislation would restore a proper balance of power between employees and employers. Employees would have the right to strike for increased wages and management would have the right to hire replacement workers on a temporary basis. This Executive order tells businesses that if they want to do business with the Federal Government, they must respect the legal rights of working men and women or look elsewhere for business.

I look forward to a full debate on this matter and urge my colleagues to reject this amendment.

Ms. MIKULSKI. Mr. President, I rise today in strong opposition to Senator KASSEBAUM's amendment that effectively vetoes President Clinton's Executive order that prevents striker replacement from being used by Federal contractors.

I am a blue collar Senator. I support the right to strike. I can't support Solidarity's right to strike in the shipyards of Gdansk and not support the rights of American unions to strike here at home.

The President's Executive order protects the right of Americans to strike by prohibiting Government contractors who make their profit off the Federal funds from permanently replacing striking employees. The Executive order will also force these managers to deal with the issues raised in the strike, not just replace workers who protest as a last resort. It will restore basic fairness to the bargaining process.

Strikers can mean economic ruin for both the workers and the company they rely on for work. There must also be equal pressure on both the workers and the company to compromise if a strike does occur.

I believe that allowing management the threat of replacing workers gives them an unfair advantage at the bargaining table. If strikers can be permanently replaced, there is considerable less pressure on businesses to address the underlying problem and settle with their workers. However, if businesses can hire only temporary replacements and workers have to face the social economic disruption of a strike, the pressure remains on both sides to work out their differences.

It's a matter of basic fairness to American workers. It ensures fairness in resolving labor disputes. My roots are in blue collar neighborhoods—this goes to my basic values.

That is why I strongly oppose Senator KASSEBAUM's amendment. This amendment vetoes my values. I urge my colleagues to join me opposing this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I know this is a very contentious issue, and I do not question anybody's motivations on either side.

I have a deep-rooted feeling and philosophy—and I have voted on this many times—that people have a fundamental right to withhold their labor—that is, to strike—if they feel it is the only way they can make their point. I do not know what other alternatives labor has in certain cases when the process breaks down.

I support the right to strike. It is fundamental. I believe that all of my colleagues feel that way. Therefore, if one says that it is an inherent, innate right for the citizens of our country, then I have to ask the question: is it a myth, that, on the one hand we say you have the right to strike, but, on the other hand we say if you exercise that right, you will lose your job permanently? That appears to me to be an inconsistency.

I can understand if we were to set up conditions. I can understand if we said that there would be a period of time in certain industries, and if there was a certain strike in an industry that in terms of the health and welfare of the people that this simply could not be tolerated. I understand there are laws in various States—in my State—that say if you are a municipal employee and strike, you can lose your job, benefits and procedures. But that is not what we are talking about. What we are talking about is taking people and just saying, ''If you strike, we will replace you permanently.'' I believe that flies in the face of what we are about as a nation.

Therefore, Mr. President, I am going to, with great reluctance, make a motion to table the amendment that is before the Senate and ask for the yeas and nays.

The PRESIDING OFFICER (Mr. GORTON). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, had I asked for the yeas and nays?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the motion to lay on the table amendment No. 331.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—42

Akaka	Biden	Boxer
Baucus	Bingaman	Bradley

Breaux	Graham	Lieberman
Bryan	Harkin	Mikulski
Byrd	Heflin	Moseley-Braun
Conrad	Inouye	Moynihan
D'Amato	Johnston	Murray
Daschle	Kennedy	Pell
Dodd	Kerrey	Reid
Dorgan	Kerry	Robb
Feingold	Kohl	Rockefeller
Feinstein	Lautenberg	Sarbanes
Ford	Leahy	Simon
Glenn	Levin	Wellstone

NAYS—57

Abraham	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Gramm	Murkowski
Bond	Grams	Nickles
Brown	Grassley	Nunn
Bumpers	Gregg	Packwood
Burns	Hatch	Pressler
Campbell	Hatfield	Pryor
Chafee	Helms	Roth
Coats	Hollings	Santorum
Cochran	Hutchison	Shelby
Cohen	Inhofe	Smith
Coverdell	Jeffords	Snowe
Craig	Kassebaum	Specter
DeWine	Kempthorne	Stevens
Dole	Kyl	Thomas
Domenici	Lott	Thompson
Exon	Lugar	Thurmond
Faircloth	Mack	Warner

NOT VOTING—1

Simpson

So the motion to lay on the table the amendment (No. 331) was rejected.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the question is on what?

The PRESIDING OFFICER. The question is on the amendment of the Senator from Kansas.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I have stated earlier, many of us want to get about the business of the appropriations bill. But it has been the decision of the Senator from Kansas to offer an amendment that affects the quality of life of hundreds of thousands of workers in this country.

As I stated earlier in the day, it is amazing to me that this institution has debated mainly two issues. One has been unfunded mandates, and the second is the balanced budget amendment. And now the first issue that comes before us affecting working people is to limit their rights and liberties in the workplace. If this amendment were to be passed tonight, millions of workers would be affected by it. Their working conditions would not be enhanced. Their wages would not be increased.

The well being of the children of those workers will not be enhanced. Their parents will not have a greater assurance of where we are going and where the Contract With America is going.

So it is an extraordinary fact that the first measure before us affecting working families is to diminish their rights and interests.

I am quite prepared to go forward, as we did earlier, with debate about the Executive order and its importance to working families. We have no interest in prolonging consideration of the underlying bill. But we do believe that this is a matter of considerable importance, and there are Senators who want to be heard.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be allowed to speak on a matter separate and apart from the existing bill for a period of about 7 or 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized.

RURAL TELECOMMUNICATIONS TECHNOLOGY DEMONSTRATION

Mr. STEVENS. Mr. President, I want to bring to the attention of the Senate a demonstration that is currently taking place in the rotunda of the Russell Senate Office Building. I urge all Members of the Senate and their staffs to stop by and see this exhibit.

It is a demonstration of a new satellite telecommunications technology and the potential for advancing telecommunications to rural areas.

The satellite technology demonstrated in the rotunda is just one of the new applications that is coming on line in the near future. Telemedicine is one of the applications that I hope it will help bring to the farthest reaches of my State.

As I think the Senate knows, Alaska is one-fifth the size of the Continental United States. We have been using satellite technology to communicate with remote Alaskan communities since the 1970's, and in many of those communities, we have only one village health aide. Using the advanced digital technology that is now becoming available—and it is used in this demonstration—it will be possible for that nurse to send medical images to hospitals in Anchorage, or even to what we call the lower 48 States, for review by a doctor, something that cannot be done today. In these remote clinics, staffed by people who just have high school education, we are going to be able to take medicine, good telemedicine, directly to the villages.

Eventually, I hope to see even more advanced telemedicine applications like the remote surgery that is being developed by the joint civilian and military medical teams today. At the rotunda demonstration, there is also a telemedicine display, and I hope other Senators will stop by and take time to look at this display.

There are a lot of other possibilities to this type of technology. Tele-education and telecommunicating are two that come to mind.

Recently, I heard of a person who is moving his family to an island in southeastern Alaska where he is going to install advanced telecommunications facilities to allow him to continue to run his business in another State. When that same technology comes down in price, as I am sure it will, I am very hopeful that others will gladly do the same thing and come enjoy our State year round.

Finally, I want to point out that this demonstration of modern technology will allow anyone who comes by to be instantly updated on the status of the last great race on Earth. That is the Iditarod. The Iditarod is going on now. The race is 1,049 miles, from Anchorage to Nome, in the middle of winter by dogsled. Each day at 2 p.m., I receive a call over this new technology that is in the Russell Building from Susan Butcher, a four-time winner of the Iditarod. She is going point to point along the trail. She is not a contestant this year. She is reporting on the race from remote checkpoints where mushers are required to rest each day. The reason she is not in the race is because she is expecting her first child and decided not to be involved in the Iditarod this year.

The demonstration will be in the Russell rotunda until next Tuesday, March 14. It is open from 9 a.m. to 5 p.m. each weekday, and we will have a reception there on Monday evening. It is my hope that other Members of the Senate and staff will come by and see the potential of telecommunications to rural areas, such as we have in Alaska. It is a very informational, very educational demonstration, and I personally invite everyone to stop by.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from New Mexico.

CBO ESTIMATE OF PRESIDENT'S BUDGET

Mr. DOMENICI. Mr. President, I apologize to the Senate for my voice, but I have a cold. Nonetheless, I have something to share with you that I think is important.

Today, the Congressional Budget Office has given their estimate of the President's budget or, might I say, reestimate. The Congressional Budget Office released its analysis of the President's budgetary proposals for 1996. The analysis debunks the President's claim that his budget holds the deficit in line at about $200 billion by revealing a total lack of restraint in the President's budget.